

1 Heinz Binder, Esq. (SBN 87908)  
2 David B. Rao (SN#103147))  
3 BINDER & MALTER, LLP  
4 2775 Park Avenue  
5 Santa Clara, CA 95050  
6 T: (408) 295-1700  
7 F: (408) 295-1531  
8 Email: [heinz@bindermalter.com](mailto:heinz@bindermalter.com)  
9 Email: [david@bindermalter.com](mailto:david@bindermalter.com)

10 Attorneys for Plaintiff South River Capital, LLC,

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**UNITED STATES BANKRUPTCY COURT**

**NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION**

In re:

Case No.: 21-50028 SLJ

EVANDER FRANK KANE,

Chapter 7

Debtor.

SOUTH RIVER CAPITAL, LLC,

Adv. Proceeding No.:

Plaintiff,

v.

EVANDER FRANK KANE,

Defendant.

**COMPLAINT TO DETERMINE DISCHARGEABILITY OF DEBT**  
**(11 U.S.C. §523(a)(2)(A) and (B))**

COMES NOW Plaintiff South River Capital, LLC (“Plaintiff”) which alleges and complains of Defendant Evander Frank Kane (“Defendant”) as follows:

**GENERAL ALLEGATIONS**

1. This complaint initiates an adversary proceeding as contemplated in Fed.R.Bank.P. 7001.

1       2. This Court has jurisdiction over this adversary proceeding pursuant to 28  
2 U.S.C. §§157 and 1334 and 11 U.S.C. §523. Venue is proper in this Court pursuant to  
3 28 U.S.C. §1409 by virtue of the Chapter 7 case pending before the United States  
4 Bankruptcy Court for the Northern District of California, San Jose Division, entitled In re  
5 Evander Frank Kane, Bankruptcy Case No. 21-50028 SLJ (the “Bankruptcy Case”), filed  
6 on January 9, 2021 (the “Petition Date”) by Defendant.

7       3. This is a core proceeding under 28 U.S.C. §157(b)(2)(I). Pursuant to  
8 B.L.R. 7008-1, Plaintiff consents to entry of a final judgment by the Bankruptcy Court.

9       4. Plaintiff is a creditor of Defendant and has standing to bring this action  
10 pursuant to 11 U.S.C. §523(a) and Fed.R.Bank.P. 4007.

11       5. On or about May 11, 2019, Plaintiff made a loan to Defendant in the  
12 original principal amount of \$600,000 (the “Loan”), as evidenced by a Promissory Note  
13 dated May 11, 2019, made, executed, and delivered to Plaintiff by Defendant in such  
14 amount (the “Note”). A true copy of the Note is attached hereto as Exhibit “A” and  
15 incorporated herein by this reference. Pursuant to the payment schedule attached as  
16 Exhibit “A” to the Note, Defendant was required to make monthly payments to Plaintiff  
17 beginning on November 30, 2019 until the Loan was paid in full.

18       6. In connection with the Loan, Defendant executed and delivered to Plaintiff  
19 a Loan and Security Agreement dated May 11, 2019 (the “Loan Agreement”), a true and  
20 correct copy of which is attached hereto as Exhibit “B” and incorporated herein by this  
21 reference. Pursuant to the Loan Agreement, Defendant granted Plaintiff a security  
22 interest in, *inter alia*, his National Hockey League (“NHL”) Uniform Player Contract with  
23 the San Jose Sharks Hockey Club dated May 24, 2018, all cash proceeds, future  
24 income, and earnings therefrom, and all of Defendant’s deposit accounts, general  
25 intangibles, and equipment (the “Collateral”), as more particularly described in the Loan  
Agreement.

26       7. To perfect its security interest in the Collateral, Plaintiff filed a UCC  
27 Financing Statement with the California Secretary of State on March 26, 2019, as Filing  
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1 No. 19-7704042105, a true and correct copy of which is attached hereto as Exhibit "C"  
2 and incorporated herein by this reference.

3       8.     Defendant defaulted on his Note payments to Plaintiff. Consequently, on  
4 November 5, 2020, Plaintiff filed a complaint for judgment by confession against  
5 Defendant in the Circuit Court for Baltimore County, Maryland, entitled South River  
6 Capital, LLC vs. Evander Kane, case number C-03-CV-20-003992 (the “State Court  
7 Action”).

8        9. On November 9, 2020, a Judgment in the State Court Action was entered  
9 against Defendant and in favor of Plaintiff in the amount of \$1,074,494.87 (the  
10 "Judgment"). A certified copy of a Notice of Confessed Judgment in the State Court  
11 Action is attached hereto as Exhibit "D" and incorporated herein by this reference.

12        10. Pursuant to the Judgment, post-judgment interest accrues at the rate of  
13 15% per annum. As of the Petition Date, interest had accrued on the Judgment in the  
14 amount of \$26,935.00. The amount owed to Plaintiff on the Judgment as of the Petition  
15 Date was \$1,101,429.87.

## FIRST CLAIM FOR RELIEF

(11 U.S.C. §532(a)(2)(B))

18       11. Plaintiff incorporates by reference paragraphs 1 through 10 above as  
19 though fully set forth herein.

20           12. The Loan Agreement contains representations and warranties in sections  
21 4.1.b, 4.1.h. and 4.1.k. (collectively referred to as the “Representations and Warranties”)  
22 respecting Defendant’s financial condition:

23 A. Defendant owns the Collateral free and clear of all liens, security  
24 interests, and other encumbrances except for those in favor of Plaintiff (Loan  
25 Agreement, §4.1.b.).

26                   B.       There are no lawsuits pending, or to the knowledge of Defendant,  
27 threatened against Defendant (Loan Agreement, §4.1.h.).

1 C. All taxes due have been paid (Loan Agreement, §4.1.k.). 12.

2 13. The representation and warranty that Defendant made to Plaintiff in

3 §4.1.b. of the Loan Agreement (to wit: that Defendant owned the Collateral free and  
4 clear of all liens, security interests, and other encumbrances except for those in favor of  
5 Plaintiff) was materially false when Defendant made it, as evidenced by the following  
6 facts.

7 A. Plaintiff is informed and believes and thereon alleges, based upon

8 the sworn statement by Defendant in the Amended Schedule D that he filed on January  
9 31, 2021 (dkt. #18), that when Defendant executed the Loan Agreement he had already  
10 granted security interests to three creditors in certain items of Collateral that Defendant  
11 pledged to Plaintiff as security for the Loan: (a) to Centennial Bank in 2018, a security  
12 interest in his future wages (Sched. D, §2.3), (b) to Professional Bank in March 2019, a  
13 security interest in his future wages (Sched. D, §2.7), and (c) to Zions Bancorporation  
14 ("Zions") in August 2018, a security interest in deposit accounts held at Zions (Sched. D,  
15 §2.11).

16 B. Plaintiff is further informed and believes and thereon alleges, based

17 upon the Security Agreement signed by Defendant on March 26, 2019 in favor of  
18 Professional Bank, a copy of which is attached to the Proof of Claim filed in the  
19 Bankruptcy Case by Professional Bank (Claim No. 1), that on March 26, 2019  
20 Defendant granted Professional Bank a security interest in the wages, bonuses and all  
21 payments to be received by Defendant pursuant to his NHL Standard Player's Contract  
22 with the San Jose Sharks.

23 C. Plaintiff is further informed and believes and thereon alleges, based

24 upon the Verified Complaint filed by Zions against Defendant on December 20, 2019 in  
25 the Santa Clara County Superior Court, case no. 19CV360613, that on August 9, 2018  
26 Defendant executed a Business Loan Agreement in which he granted Zions a security  
27 interest in all deposit accounts of Defendant at Zions, including the deposit account that  
28 Defendant opened at Zions on August 8, 2018.

1                   D. Plaintiff is further informed and believes and thereon alleges, based  
2 upon the Ex Parte Application for Order Pursuant to Rule 2004 of the Federal Rules of  
3 Bankruptcy Procedure filed by Centennial Bank in the Bankruptcy Case (dkt. #40) and  
4 the exhibits to the Proof of Claim filed by Centennial Bank on March 18, 2021 (Claim  
5 No. 5) that on September 5, 2018, Defendant executed a Security Agreement in which  
6 he granted Centennial Bank a security interest in (a) his NHL Standard Player's  
7 Contract with the San Jose Sharks, (b) all wages, bonuses, and any other payments  
8 Defendant would receive under his Player's Contract, and (c) in a depository account he  
9 was to open at Centennial Bank.

10                  E. On March 26, 2019 and on March 27, 2019, respectively,  
11 Centennial Bank and Professional Bank filed UCC Financing Statements with the  
12 California Secretary of State. These UCC Financing Statements perfected the secured  
13 party's security interest in Defendant's NHL Player's Contract with the San Jose Sharks  
14 and all of Defendant's deposit accounts, general intangibles, and equipment. True  
15 copies of the UCC Financing Statements filed by Centennial Bank and Professional  
16 Bank are attached hereto as Exhibits "E" and "F", respectively, and incorporated herein  
17 by this reference.

18                  14. The representation and warranty that Defendant made to Plaintiff in  
19 §4.1.h. of the Loan Agreement (to wit: that there are no lawsuits pending against  
20 Defendant) was materially false when Defendant made it, as evidenced by the following  
21 facts.

22                  A. Plaintiff is informed and believes and thereon alleges that when  
23 Defendant executed the Loan Agreement, he was defending a lawsuit filed by Rachel  
24 Kuechle ("Kuechle") that she filed against him on July 1, 2016 in the Erie County, New  
25 York, Supreme Court, index no. 807030/2016, in which she sought damages resulting  
26 from alleged physical battery resulting in personal injury (the "Kuechle Suit"). Attached  
27 hereto as Exhibits "G-1" and "G-2", respectively, are true copies of the Summons and  
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1 Complaint filed by Keuchle and the court docket for the Kuechle Suit dated as of March  
2 10, 2021 and incorporated herein by this reference.

3                 B. Plaintiff is further informed and believes and thereon alleges that  
4 when Defendant executed the Loan Agreement, he was defending a lawsuit filed by  
5 Hope Parker ("Parker") that she filed against him on October 24, 2018 in the Santa  
6 Monica County, California, Superior Court, case no. 18SMCV00095, in which she  
7 sought damages resulting from alleged fraud (the "Parker Suit"). Attached hereto as  
8 Exhibit "H" and incorporated herein by this reference is a true copy of the court docket  
9 for the Parker Suit as it existed on March 17, 2021.

10                 15. The representation and warranty that Defendant made to Plaintiff in  
11 §4.1.k. of the Loan Agreement (to wit: that all taxes owed by Defendant had been paid)  
12 was materially false when Defendant made it, as evidenced by the following. Plaintiff is  
13 informed and believes and thereon alleges, based upon the Proof of Claim filed in the  
14 Bankruptcy Case by the Michigan Department of Treasury (Claim No. 2) that when  
15 Defendant executed the Loan Agreement he owed income taxes to the State of  
16 Michigan and the City of Detroit for the tax period 1/1/2018 – 12/31/2018. Attached  
17 hereto as Exhibit "I" is a true copy of the Proof of Claim filed by the Michigan  
18 Department of Treasury and incorporated herein by this reference.

19                 16. Defendant knew the Representations and Warranties were false when he  
20 made them.

21                 17. Defendant made the Representations and Warranties with the intention of  
22 deceiving Plaintiff and inducing Plaintiff to make the Loan to Defendant.

23                 18. Plaintiff, at the time Defendant made the Representations and Warranties  
24 and at the time Plaintiff made the Loan to Defendant, was ignorant of the falsity of the  
25 Representations and Warranties and reasonably relied upon them in its decision to  
26 make the Loan to Defendant. Had Plaintiff known the true facts, it would not have made  
27 the Loan to Defendant.

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1        19. Plaintiff's damages, as documented in the Judgment entered in the State  
2 Court Action, proximately resulted from the Representations and Warranties.

3       20. The debt in the amount of \$1,101,429.87 owed by Defendant to Plaintiff is  
4 nondischargeable under 11 U.S.C. §523(a)(2)(B).

5 WHEREFORE, Plaintiff prays for judgment against Defendant as hereafter set  
6 forth.

## **SECOND CLAIM FOR RELIEF**

(11 U.S.C. §523(a)(2)(A))

9           21. Plaintiff incorporates by reference paragraphs 1 through 10, 12 through  
10 17, and 19, above, as though fully set forth herein.

11       22. Plaintiff, at the time Defendant made the Representations and Warranties  
12 and at the time Plaintiff made the Loan to Defendant, was ignorant of the falsity of the  
13 Representations and Warranties and justifiably relied upon them in its decision to make  
14 the Loan to Defendant. Had Plaintiff known the true facts, it would not have made the  
15 Loan to Defendant.

16       23. If or to the extent any of the Representations and Warranties are not  
17 statements respecting Defendant's financial condition, they satisfy the requirements for  
18 false representations and actual fraud, and in that case the debt in the amount of  
19 \$1,101,429.87 owed by Defendant to Plaintiff is nondischargeable under 11 U.S.C.  
20 §523(a)(2)(A).

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

22 A. On the First and Second Claims for Relief, that the Court determine that  
23 the debt owed by Defendant to Plaintiff in the amount of \$1,101,429.87 as of the  
24 Petition Date is nondischargeable and that Plaintiff have judgment against Defendant  
25 for same.

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1           B.     For costs of suit and such other and further relief as the Court deems just  
2 and proper.

3 Dated: May 4, 2021

BINDER & MALTER, LLP

4 By: /s/ David B. Rao

5 David B. Rao, Attorneys for  
South River Capital, LLC

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8 SouthRiverCapital/Pleadings/DischargeabilityComplaint

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